

FILED

JUN 03 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

*B
99
see pl
SL*

1 Scott Maurer (CSB #180830)
2 James Lindfelt (CSB #275352)
3 ALEXANDER COMMUNITY LAW CENTER
4 1030 The Alameda
5 San José, CA 95126
6 Phone: (408) 288-7030
7 Fax: (408) 288-3581

ADR

8 Attorneys for Plaintiff, Blanca Santos

9 UNITED STATE DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA
11 (San Jose Division)

PSG

12 BLANCA SANTOS,

13 Plaintiff,

14 v.

15 LVNV FUNDING, LLC,
16 THE BRACHFELD LAW GROUP, PC, and
17 ERICA BRACHFELD,

18 Defendants.
19

CV 11-02683
Case No.

COMPLAINT

JURY TRIAL DEMANDED

20 **INTRODUCTION**

21 1. BLANCA SANTOS is a single mother with limited income. When LVNV FUNDING
22 sued SANTOS in State court, SANTOS contacted the BRACHFELD LAW GROUP and entered
23 into a settlement agreement. Ms. SANTOS proceeded to make all the payments called for by the
24 settlement agreement. Rather than dismissing the case with prejudice, Defendants proceeded -
25 without any warning - to take a default and to attempt to levy on Ms. SANTOS's bank account
26 and garnish her wages. This action is brought to redress those unfair debt collection practices.
27
28

COMPLAINT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) (the Federal Fair Debt Collection Practices Act) & 28 U.S.C. §1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. §1367.

III. VENUE

3. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(b), in that a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

IV. INTRADISTRICT ASSIGNMENT

4. This lawsuit should be assigned to the San Jose Division of this Court because a substantial part of the events or omissions which gave rise to this lawsuit occurred in San Mateo County.

V. PARTIES

5. Plaintiff BLANCA SANTOS (hereafter SANTOS), is a natural person residing in Santa Clara County, California and is a consumer as defined by 15 U.S.C. §1692a(3), and a debtor as defined by Cal. Civ. Code §1788.2(h).

6. Defendant LVNV FUNDING LLC (hereafter LVNV) is, and at all times mentioned herein was, a Delaware Limited Liability Corporation. LVNV is a debt collector as defined by 15 U.S.C. § 1692a(6) and by Cal. Civ. Code §1788.2(c).

1 SANTOS several times that if she made the payments she would not need to go to court, that the
2 debt would be resolved, and that she should disregard the summons.

3
4 13. SANTOS made the five payments outlined in the letter and considered the debt
5 resolved.

6 14. Defendants knew that SANTOS had completed her payment plan on or about
7 February 28, 2009.

8
9 15. On September 23, 2009, seven months after SANTOS completed the payment plan,
10 Defendants filed a Request for Entry of Default and were granted an Entry of Default in the State
11 Court Action. The next day LVNV was granted a default judgment, in the amount of \$4,210.75.

12 16. SANTOS never received a copy of the Request for Entry of Default although
13 BRACHFELD declared that a copy was sent to her.

14
15 17. On or about March 2, 2010 Defendants caused SANTOS s bank account to be levied.
16 SANTOS s bank charged her a fee for processing the levy. Defendants knew or should have
17 known that at the time they levied on SANTOS s account that SANTOS had fulfilled all her
18 obligations under the aforementioned settlement agreement.

19
20 18. In or around October of 2010 Defendants served an earnings withholding order on
21 SANTOS s employer.

22 19. The taking of the default, the bank levy, and the wage garnishment constituted a
23 continuing pattern and course of conduct as opposed to unrelated discrete acts.

24
25 20. The afore-mentioned course of conduct caused SANTOS emotional distress.

26 21. The judgment in the State Court action was set aside on or about May 3, 2011.

27 22. Until the State Court judgment was set aside, Santos was legally restrained from
28

1 filing this action under the Rooker-Feldman doctrine and/or state law res judicata and/or claim
2 preclusion rules.
3
4

5 **FIRST CAUSE OF ACTION**
6 Federal Fair Debt Collection Practices Act.
7 15 U.S.C. §1692 *et seq.*
(Asserted Against All Defendants)

8 23. SANTOS alleges and incorporates by reference each and every allegation set forth
9 above.
10

11 24. Defendants violated 15 U.S.C. §§ 1692e(2)(A) and e(10), by representing that Ms.
12 SANTOS owed a debt which Cross-Defendants knew was not owing.

13 25. Defendants violated 15 U.S.C. §1692d by engaging in conduct that had the natural
14 consequences of harassing, oppressing, and abusing Ms. SANTOS.
15

16 26. Defendants violated 15 U.S.C. §§ 1692f and f(1) by attempting to collect
17 additional fees and interest, in addition to the full amount already paid by Ms. SANTOS, in
18 contravention to the parties settlement agreement.

19 27. As a direct and proximate result of Cross-Defendant s violations of the consumer
20 protections afforded by 15 U.S.C. §1692 *et seq.* Ms. SANTOS is entitled to recover actual
21 damages and statutory penalties in such amounts as the court may allow, as well as reasonable
22 attorney fees and costs of suit pursuant to 15 U.S.C. §1692k.
23
24
25
26
27
28

SECOND CAUSE OF ACTION
Rosenthal Fair Debt Collection Practices Act.
Cal. Civ. Code § 1788 *et seq.*
(Asserted Against LVNV and BLG)

28. Plaintiff realleges and incorporates herein by this reference each and every allegation set forth in all other paragraphs.

29. Defendants violated Cal. Civil Code §1788.17 by violating the Federal Fair Debt Collection Practices Act as set forth in detail in the First Cause of Action above.

30. Defendants violated Cal. Civil Code §1788.13(c) by communicating with SANTOS in the name of an attorney, upon stationery or like written instruments bearing the name of the attorney, despite the fact that no attorney approved or authorized such a communication.

31. Defendants violated Cal. Civil Code §1788.14(b) by attempting to collect charges (e.g. attorney s fees) not permitted by law because Defendants entered into a settlement agreement with SANTOS and SANTOS made all payments pursuant to that agreement.

32. The foregoing violations were committed willfully and knowingly.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays that this court:

With respect to First Cause of Action (Violations of 15 U.S.C. § 1692)

- a. Award statutory damages in the amount of \$1,000 pursuant to 15 U.S.C. §1692k(a)(2)(A)
- b. Award actual damages of not less than \$4,069 pursuant to 15 U.S.C. §1692k(a)(1)
- c. Award reasonable attorney s fees and costs pursuant to 15 U.S.C. §1692k(a)(3)

1 d. Award any such other relief that the court deems proper
2
3

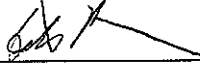
4 **With respect to Second Cause of Action (Violations of California Civil Code §1788)**

- 5 a. Award statutory damages in the amount of \$2,000 pursuant to California Civil Code §
6 1788.30(b) and Cal. Civ. Code § 1788.17
7 b. Award actual damages of not less than \$4,069 pursuant to 15 U.S.C. §1788.30(a)
8 c. Award court costs and reasonable attorney s fees pursuant to Cal. Civ. Code § 1788.30(c)
9 d. Award any such other relief that the court deems proper.
10

11 Respectfully Submitted,

ALEXANDER COMMUNITY LAW CENTER

12
13 Dated 5/20/11

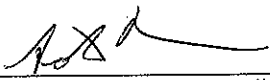
14 
Scott Maurer (C.S.B. #180830)

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff BLANCA SANTOS demands a trial by jury in this action.

ALEXANDER COMMUNITY LAW CENTER

Dated: May 27, 2011



Scott Maurer (C.S.B. #180830)